UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,574	03/25/2004	Jack Perlman	9244-91494	7107

24628 7590 09/07/2004

WELSH & KATZ, LTD
120 S RIVERSIDE PLAZA
22ND FLOOR
CHICAGO, IL 60606

EXAMINER	
WALSH, DANIEL I	

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/809,574	PERLMAN, JACK	
	Examiner	Art Unit	
	Daniel I Walsh	2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-27 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-27 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, 7, 9, 10, 15, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Attikiouzel (US 4,911,256).

Re claim 1, Attikiouzel teaches a scale (weighing means 32), a computer having a microprocessor, one or more memory means and input means (abstract and FIG. 1), data stored in at least one of the one or more memory means including the nutritional value of the food (ROM 36), a screen for viewing the nutritional value of the food (FIG. 1), whereby when a portion of food is placed on the scale and the type of food is entered into the computer by the input means, nutritional values can be determined and displayed on the screen (see claim 1).

Re claims 2-3, Attikiouzel teaches that the determined nutritional information is stored in one or more memory means (RAM 38), means to add the nutritional information determined for one food to information determined for another food and storing the combined information in one or more of the memory means (RAM 38 and the use of the ADD function (col 5, lines 15+)).

Re claim 7, Attikiouzel teaches a keyboard input means (FIG. 1).

Re claim 9, Attikiouzel teaches a tare function (col 4, lines 30+).

Re claim 10, Attikiouzel teaches the keyboard controls the mode of the device, as it contains at least request means 22a and nutrient level request means 24a, which controls at least one of a weighing mode and nutrient calculating and displaying mode.

Re claim 15, the limitations have been discussed above re claims 1, 3, and 10.

Re claim 20, the limitations have been discussed above re claim 9.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 8, 11, 12, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attikiouzel.

Re claim 8, Attikiouzel teaches a touch sensitive keyboard (col 2, lines 25+) but is silent to a touch sensitive screen. The Examiner notes that it would have been obvious to an artisan of ordinary skill in the art to use a touch sensitive screen, as touch sensitive screens are well known in the art, and are even well known for scales (Muyal US 2003/0168260). The use of a touch screen is an obvious expedient, which provides a continuous surface that is not prone to damage by food, as in the case of keyed keyboards, which also reducing the size of the scale device.

Re claim 11, Attikiouzel teaches indication of carbohydrates of the food (col 2, lines 60+). Though not specifically the "bread equivalent" of food, the Examiner notes that the bread

equivalent is the number of 15g bread/starch servings. Though the scale only displays the total number of carbohydrates, the Examiner notes that it would have been obvious to an artisan of ordinary skill in the art, as a matter of design variation, to display the amount of bread servings. Attikiouzel teaches providing warnings if excessive doses of certain nutritional amounts are measured (see page 7). Accordingly, it would have been well within the skill in the art to provide a warning to a diabetic if too many carbohydrates are consumed. The Examiner notes that as the prior art teaches warnings and the total amount of carbohydrates consumed, it would have been an obvious matter of design variation, well within the skill in the art, to provide a bread equivalency display, for providing carbohydrate information to the diabetic user to ensure their health. Simply providing a display that outputs the total carbohydrate amount divided by fifteen is an obvious design variation that simply performs a basic mathematical division on a fetched variable/amount. Accordingly, such a limitation simply provides an automated means of calculating the bread servings (manual activity) and therefore involves only routine skill in the art.

Re claim 12, Attikiouzel teaches the displaying of calorific content, carbohydrates, protein, fat, fiber, cholesterol, sodium, and the like (col 2, lines 60+). Though Attikiouzel is silent to sugars, general calories/calories from fat, and saturated fat, the Examiner notes that such nutritional values are well know and conventional nutritional values associated with food. It would have been obvious to include such additional nutritional breakdown to provide additional health information to the user regarding the foods being weighed. Such nutritional values are well known and conventional in the art, and their inclusion is an obvious expedient.

Re claim 19, the limitations have been discussed above re claim 8.

Re claim 21, the limitations have been discussed above re claim 11.

3. Claims 4-6, 13-14, and 16-18, and 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attikiouzel, as applied to claim 1 above, further in view of Gardener (GB 2 317 961).

Re claim 4, the teachings of Attikiouzel have been discussed above. Attikiouzel teaches RAM 38 stores information, but is silent to assigning information to a user and storing it in a memory means.

Gardener teaches a food weighing scale with nutritional calculation that includes a display and storage device (abstract). Re claims 2-4, Gardener teaches that the determined nutritional information is stored in a memory means for a specific user (page 5, paragraph 3), combining determined nutritional information from two foods and storing the combined information in one or more storing means assigned to a user (see page 3, #3, #4, and claim 7).

Re claim 5, Gardener teaches nutritional information for food for more than one user can be determined and stored in memory means so that a user can retrieve his data from storage (see claims 12+, which teach that data regarding stored food information is retrievable from memory for analysis/records).

Re claim 6, Gardener teaches a magnetic strip/barcode reader to read a magnetic strip/barcode provided by the manufactures to provide nutritional information. The Examiner interprets this to include further nutritional information being determined and added to the information stored in one or more of the memory means, as it is obvious that such information would be stored in memory means.

Re claim 13, Attikiouzel is silent to move data stored in the memory means to a second device.

Re claims 13-14, Gardener teaches moving the stored data to a second device/computer attachment means (abstract).

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of with those of Gardener.

One would have been motivated to do this in order to permit multiple users to use the device and have data stored for later use that can be transferred to a computer to be analyzed/printed, etc.

Re claim 16, the limitations have been discussed above re claim 4.

Re claim 17, the limitations have been discussed above re claim 5.

Re claim 18, the limitations have been discussed above re claim 6.

Re claim 22, the limitations have been discussed above re claim 12.

Re claims 23, the limitations of Attikiouzel have been discussed above.

Attikiouzel is silent to entering a code associated with the weighted food into the microprocessor using the input means and viewing the nutritional value displayed on the screen, as Attikiouzel teaches an alphabetic string.

Gardener teaches inputting a code into the device and viewing nutritional information (page 4, last paragraph). The Examiner also notes that it is well known and conventional to enter numeric/letter codes (see GB 2 133 166 abstract).

At the time the invention was made, it would have been obvious to an artisan of ordinary skill in the art to combine the teachings of Attikiouzel with those of Gardener.

One would have been motivated to do this to have a well known means of entering data that can be user friendly and efficient, and reduce error.

Re claims 24-25 and 27, the limitations have been discussed above, re claim 5.

Re claim 26, Attikiouzel teaches weighing a second portion of food, determining its nutritional value, adding it to the values of previous determined foods and displaying the summed value (col 15, lines 15+). Though silent to displaying individual values, it is obvious to display the individual values so that the user knows the nutritional content of the additional items, total, and also permits the editing of individual item amounts when necessary (also see US 2004/0118618 which teaches both total nutrition being displayed, but also being able to step through individual nutrition/point information, so that the whole process does not need to be restarted when wanting to update).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Walsh (GB 2 229 541), Chi Chiu Cha (GB 2 296 780), Palmer (GB 2 133 166), Arroubi et al. (WO 000242725), Hamm (WO 09501553), Hettinger (US 5,033,561), Kretsch et al. (US 5,233,520), Davidson et al. (US 2004/0118618), and Knab et al. (GB 2 269 021).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Walsh whose telephone number is (571) 272-2409. The examiner can normally be reached between the hours of 7:30am to 4:00pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone numbers for this Group is (703) 308-7722, (703) 308-7724, or (703) 308-7382.

Communications via Internet e-mail regarding this application, other than those under 35 US.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to **[daniel.walsh@uspto.gov]**.

> All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set for the in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

DW
8/25/04

KARL D. FRECH
PRIMARY EXAMINER